Karnataka Government Compliance with
Supreme Court Directives on Police Reform

KARNATAKA POLICE (AMENDMENT) BILL, 2007

(Amending without replacing the Karnataka Police Act, 1963)

Directive 1 Constitute a binding State Security Commission to (i) ensure that the state government does not exercise unwarranted influence or pressure on the police, (ii) lay down broad policy guidelines, and (iii) evaluate the performance of the state police. In the composition of this Commission, governments have the option to choose from any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee.

- The new Karnataka Bill creates a State Security Commission (SSC), however the SSC does not have the power to make binding recommendations (Bill s.30B), despite the clear directive from the Supreme Court that the Commission's decisions must be binding to avoid undue influence on the police.

- The creation of the SSC is not immediate, pursuant to the Court's directive, but shall take place "no later than three months" after the coming into force of the Amended Act (Bill s.30A).

- The composition of the SSC does not conform with any of the models recommended by the Supreme Court, and lacks significant protections against government control and manipulation of the new Commission:

  - The **MPA model** (Sorabjee Committee) is not met. It calls for 5 independent members (none of whom can be sitting government persons), and adds that they must be appointed only on the recommendation of a tri-partite Selection Panel that follows a transparent process. The selection panel is meant to be composed of non-government individuals, including a retd Chief Justice of the High Court, and the Chairs of the State Human Rights Commission and SPSC (MPA ss.42, 43, 44). Conversely the Bill proposes only 2 independent ("non-official") members, who are to be nominated by the Government!

  - The MPA also stipulates that a High Court Judge (retd) nominated by the Chief Justice must be a member of the SSC, that 2 members must be women, and that minorities must be adequately represented (MPA s.42). The Bill calls for the retd Judge to be nominated by the Government, and requires only one woman representative (Bill s.30A(e)(f)).

  - According to the MPA, the secured tenure for independent members is 3-years, with a maximum of 2 terms (MPA s.46). Conversely, the Karnataka Bill stipulates that independent members serve "subject to the pleasure of the Government" (Bill s.30A(3))

  - The new Bill (s.30A(4)) provides some ability to remove independent members, but it fails to stipulate that removal ought to occur only upon the approval of 2/3 of the members of the SSC, with reasons provided in writing (MPA s.47).

  - The **Ribeiro Committee** model is not met—the Ribeiro model requires the 3 independent members be chosen by a panel created by the Chair of the NHRC, and stipulates that a High Court judge nominated by the Chief Justice, must be a member. The Ribeiro model does not contemplate the Home Secretary serving on the SSC (Ribeiro Recomm. 1.2).

- The **National Human Rights Commission** model is not met—the NHRC model calls for two sitting or retired High Court judges (nominated by the Chief Justice) to sit as members of the SSC. In the alternative, one judge may sit, together with a member of the State Human Rights Commission or the Lok Ayukta of the State. Like the Ribeiro model, the NHRC model does not contemplate the Home Secretary serving on the SSC (NHRC petition, p.87).

o The function of the SSC does not comply with the SC directive. The Court expressly stated that the purpose of the SSC is to ensure that the State Government does not exercise unwarranted influence or pressure on the Police, and its functions must include giving directions for the performance of preventative tasks by the Police. Each of these specific functions/purposes is absent from the Bill s.30B (See also Ribeiro Recomm. 1.5, and NHRC petition, p. 88).

- In addition, while the Karnataka Bill calls for an annual report to be prepared by the SSC for the State Government, which is then obligated to place such report before the Legislature (Bill s.30C(2))—this does not fully comply with the Court's order. The directive stipulates that the report of the SPB must proceed directly to the State Legislature. (See also Ribeiro 1.5; NHRC Petition, p.88.) This aspect of the decision ensures that the report proceeds on a timely and unadulterated basis to the Legislature itself. (Note: the MPA (at s.50(2)) adds that the Annual Report must be made available to the public.)

- The function of the SSC also does not mirror the models recommended by the Supreme Court. For example, the MPA states that one of the functions of the SSC is to recommend the DGP candidates for appointment by the State Government (MPA s.48). This function is not present in the Karnataka Bill.

- The Bill sets out that fees and allowances payable to Independent members of the SSC "shall be such as may be prescribed" (Bill s.30A(9)). However the MPA is more explicit, it creates a positive onus. The Model Act states that the expenses of the SSC re: travel, allowances and remuneration shall be paid by the State Government (MPA s.49).

Directive 2
Ensure that the Director General of Police is appointed through a merit based, transparent process and enjoys a minimum tenure of two years.

- The Karnataka Bill provides 2 years minimum tenure to the DGP, however, this tenure is subject to superannuation (Bill s.6(3)). This is in direct violation of the SC directive which calls for minimum tenure independent of the date of superannuation [see also MPA s.6(3)].

- The Bill does not enumerate the three specific criteria which the SC stated must be used for selecting a DGP, and it does not require that the state government select a DGP from a panel of candidates empanelled by the UPSC, a non-state organization (Act s.12(2)). Quite the opposite, the Karnataka Bill proposes that the DGP be chosen from among a group empanelled by the Government! This completely subverts the Supreme Court's goal of depoliticizing the selection process and limiting state interference! [The selection process also contradicts MPA ss. 6(2), which outlines in detail the criteria upon which a DGP is to be chosen.]

- The basis for ineligibility as DGP does not mirror the Court's Order. For example, the SC clearly stated that any DGP with "a conviction in a court of law for a criminal offence" would not be eligible. However the new Bill purports to exclude any candidate who is simply an accused

party, prior to a conviction being entered (Act s.6). This will allow increased interference through the laying of false charges.

- Some of the enumerated grounds for premature removal of the DGP (s.6(3)) do not reflect the SC's directives:

  - Karnataka has added a ground not contemplated by the Court—namely "promotion to a higher post". This provision makes the DGP subject to significant pressure and manipulation, particularly since the individual's consent to the promotion is not required under the legislation (see by comparison MPA s.6(3)(e), which requires the DGP's consent in similar circumstances).
  - The Bill also includes "incompetency and inefficiency in the discharge" of duties (Bill s.6(3)(f)), as a basis for removing a DGP prior to the expiration of 2 years of tenure. This ground is not captured in the SC Order. "Incompetency and inefficiency" are undefined, and as such, subject to significant manipulation by the State Government. (Arguably s.6(3)(f) is redundant given the ability to prematurely remove a DGP due to disciplinary issues, contained in s.6(3)(b) and (c) of the new Bill.)

o The SC directive only contemplates premature removal of the DGP on enumerated grounds when the State Government acts "in consultation with the State Security Commission". However, the Karnataka Bill permits the Government to act <u>unilaterally</u> in removing a DGP based on one of the enumerated grounds in s.6(3) of the legislation.

Directive 3

Ensure that other police officers on operational duties (Superintendents of Police in-charge of a district, Station House Officers in-charge of a police station, IGP (zone) and DIG (range)) also have a minimum tenure of two years.

- While the new Karnataka Bill provides a minimum tenure of 2 years for certain officers, it does not explicitly extend the tenure requirement as far as the SC directed—the IGP in charge of a zone, and DIG in charge of a range are not provided a similar guaranteed tenure (Bill s.6A(4)).

- The Bill articulates a basis for premature removal of the senior officers, however, these grounds do not reflect the SC's directive.

  - As set out above (re DGP), the Court indicated that any officer with "a <u>conviction</u> in a court of law for a criminal offence" would not be eligible. However the Bill authorizes early removal of any officer who is nothing more than an accused party, prior to a conviction being entered (Act s.6A(5)(b)).
  - Other grounds in the Bill exceed what is permitted by the Court, rendering the Officers' tenure still vulnerable to arbitrary state interference. For example, contrary to the SC's directives, in Karnataka an officer may be removed prior to 2 years of tenure due to both "reversion" and "leave" (Act s.6A(4)).
  - The DGP may also be terminated early "if he exhibits a palpable bias in the discharge of his duties" or a "misuse or abuse of the powers vested in him" (s.6A(5)(d)(e)). These broad grounds are completely undefined, and leave open the possibility of state manipulation and improper interference. (Arguably these grounds are also redundant given the ability to prematurely remove a DGP due to disciplinary issues, contained in s.6A(5)(c) of the new Bill.)
  - The SC directive permits premature removal in to fill vacancies caused by "promotion" or "retirement", but the Karnataka Bill (s.6A(5)(g)) adds that premature removal is also possible to address a vacancy caused by "transfer".

This violates the Court's Order—this ground was specifically omitted by the SC because of governments' historic exploitation of the transfer power.

Directive 4 Separate the investigation and law and order functions of the police.

- The new Bill does not substantively address this SC directive, and is in violation of the Court's Order. Karnataka simply states, in one clause dedicated to the issue, that "the Government may…separate the investigating police from the law and order police in such area, as may be specified…" (Bill s. 15A(1)).

- This provision is entirely speculative, and leaves the decision about separating the two functions completely in the State Government's discretion. In order to ensure expedited investigations, improved expertise and better rapport with citizens, the Court stipulated that directive 4 must take immediate effect. Karnataka has ignored this part of the Court's ruling.

Directive 5 Set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. This Board will comprise the Director General of Police and four other senior officers of the police department, and will be empowered to dispose of complaints from SPs and above regarding discipline and other matters.

- The Karnataka Bill creates a Police Establishment Board, but fails to do so in conformity with the SC directive. The SC directive explicitly provides the PEB a wide mandate to dispose of complaints from SPs and above concerning "promotion, transfer, disciplinary proceedings, or their being subjected to illegal or irregular orders" along with "generally reviewing the function of the police in the state." This aspect of the Court's order is violated in several respects:

    - The Board is not authorized to determine appeals from officers at the SP rank and above. It's appellate jurisdiction is limited to hearing complaints from subordinate officers (Inspectors and below). All appeals from more senior officers are deferred to the SSC. (Bill s.30E(4),(2)).
    - Under the Karnataka Bill, the PEB does not have the jurisdiction to "generally review the functioning of the police in the state"

o Contrary to the Court's order, the Karnataka Bill does not authorize the PEB to play more than an advisory role in deciding transfers, posting and promotions for officers at the rank of DSP or above. According to the Court, the decisions of the PEB for officers at the rank of DSP or above are recommendatory, however, the SC expressly stated "the Government is expected to give due weight to these recommendations and shall normally accept" them. (See also MPA, s.53(3)). This type of strong quasi-binding language is absent from the Karnataka Bill (Bill 30E(3)).

    - For example, the Bill firmly entrenches absolute State government control over the most senior officers. Section 6 of the Bill plainly states that the DGP is subject to the unqualified "control of the government".

<u>Additional Concerns regarding the MPA Model</u>

- The MPA provides that all police personnel subject to a promotion or transfer will be provided with a minimum tenure of 2 years (MPA s.53(7)). This protection is absent from the Karnataka Bill.

Directive 6
Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt, rape in police custody, extortion, land grabbing and serious abuse. The Complaints Authorities are binding on criminal and disciplinary matters.

The state level authority is to be chaired by a retired judge of the High Court or Supreme Court to be chosen by the state government out of a panel of names proposed by the Chief Justice. It must also have three to five other members (depending on the volume of complaints) selected by the state government out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta and the State Public Service Commission. Members of the authority may include members of civil society, retired civil servants or police officers or officers from any other department.

The district level authority is to be chaired by a retired district judge to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her. It must also have three to five members selected according to the same process as the members of the state level Police Complaints Authority.

- The new Karnataka Bill creates a State and District-level Police Complaints Authority, but fails to formally comply with the Court's directive. Most importantly, the straightforward SC directive that the recommendations of the PCA regarding criminal and disciplinary matters must be binding on the State Government, has not been followed. Instead, the Bill qualifies the "binding" nature of PCA disciplinary recommendations, stipulating that any such recommendation "shall, however, not prejudice the application of mind by the enquiry officer or the investigating officer when he is conducting the departmental inquiry" (Bill s.30F(10))

- The composition of the proposed State PCA clearly violates the SC directive. The Court explicitly directed that the Chair must be a retired Judge of the High Court or Supreme Court (nominated by the Chief Justice). Apart from the Chair, the PCA must include several other members selected by the Government out of a panel of names prepared by the Lok Ayukta, the State Human Rights Commission and the State Public Service Commission. (MPA ss.160-161 creates a similar requirement). Conversely, the Karnataka Bill provides that the Chief Secretary will serve as Chair, and that all other members of the State PCA will come from the ranks of government and serving police officers! (Bill s.30F(2)). This composition completely subverts the Court's goal of ensuring independent public oversight of police misconduct. (See also MPA s.160, 161).

- The composition of the District PCA similarly violates the SC's directive. The Bill purports to entrench the Regional Commissioner of Police as Chair, despite the Court's order that the Chair of the District PCA must be a Retd District Judge, nominated by the Chief Justice. As outlined immediately above, the State of Karnataka has ignored the Court's order regarding selection of the remaining members of the District PCA, and proposes instead to staff the Authority with serving police officers! (Bill s.30F(3)). (See also MPA s.173(2)).

- The Bill permits the State government 3 months within which to establish both PCAs (Bill s.30F)—whereas the SC directive is intended to have immediate effect, and does not contemplate staged implementation.

- Both the SC directive and the MPA (ss. 163-165) stipulate that members of the PCAs must be full-time and suitably remunerated—these attributes are missing from the Karnataka Bill.

Additional Concerns regarding the MPA Model

- The requirements under the MPA respecting the composition of the PCA are more stringent, and have not been followed. For example, the MPA states that the PCA should include someone with experience in the law as a prosecutor or professor, plus at least one woman (MPA s.160).

- There are a host of items not addressed in the Karnataka Bill:

    - Tenure. The MPA (s.163) states that the tenure of PCA members ought to be 3 years—the Karnataka Bill does not contemplate tenure of PCA members.

    - Eligibility. The new Bill fails to address eligibility requirements for those serving on the PCA, or grounds for removal of members (see MPA s.162, 164)

    - Ability to file complaint. The MPA (s.167) would permit complaints to be lodged with the PCA from a wide array of groups, thereby increasing the likelihood of greater accountability. The Karnataka Bill is silent regarding this issue.

    - Rights of Complainants. The Bill does not address the rights of those who complain to the PCA, which include the rights to attend hearings, inquire about delays, and be informed re all conclusions (MPA s. 177).

    - Annual Reporting. MPA s.172 contemplates an annual report prepared by the PCA, summarizing the cases monitored, and providing recommendations regarding misconduct. This report is to be placed directly before the State Legislature during the Budget session, and made accessible to the public. The Karnataka Bill is silent respecting reporting duties.

- The powers of the both levels of PCA to compel evidence, etc. are fairly broad in the new Bill, at s.30F(8), however, the full scope of powers awarded to the PCA under MPA s.168-170 are absent. For example, the Bill does not give the PCAs the power to: requisition public records, issue authorities for the examination of witnesses, protect witnesses and statements, visit stations and lock-ups, and operate as a civil court.

- Although the Karnataka Bill authorizes the PCAs to inquire into the same type of misconduct outlined in the Court's order, the MPA suggests an even broader mandate for the Authority. The MPA (s.167) provides that the Complaints bodies should also inquire into situations of arrest or detention without due process of law, and authorizes the PCA to monitor the status of internal police department inquiries and guard against delays. These kinds of investigative powers are critical to achieve actual police reform, yet they are absent from the Karnataka Bill.

Miscellaneous

Unlike many other states, Karnataka has not elected to repeal its old Police legislation in its entirety. Instead, the state is planning to pass an amendment to its existing legislation, the Karnataka Police Act, 1963.

Certain portions of the Karnataka Police Act, 1963 that have not been amended are addressed immediately below:

- The Karnataka Police Act, 1963 retains an omnibus exemption clause, at s.169, which protects from liability any action taken in "good faith" by a Magistrate, Police Officer or public servant. This type of omnibus exemption clause is dangerous and subject to significant abuse, as the government can cloak any mishandling of police affairs under the guise of the undefined

notion of "good faith" and thereby immunize the police and the state from the very type of accountability this new Court decision is meant to help implement.

- Further, the 1963 statute (Act s.179) contains a provision which actually exempts the state from having to comply with its own legislation "if any difficulty arises in giving effect to the provisions of this Act." This permissive override is dangerous and vulnerable to manipulation, as the government may simply defer complying with its own legislation based on the assertion that "difficulties" have arisen in the implementation process. The existence of s.95 increases the likelihood of state influence, and entirely undermines the Supreme Court's directives.

- The 1963 statute contains a clause which immunizes police officers from prosecution for an offence, absent the sanction of the State Government (s.170). This provision is an anachronism, and must be removed. It is entirely contradictory with both the letter and spirit of the SC ruling, which is to ensure that police personnel are held publicly accountable. If the State may intervene to prevent prosecutions against unlawful officers from proceeding, the potential for collusion and the immunization of human rights abuses is extremely significant.

- The 1963 Act has not been amended to include a preamble, similar to the one contained in the MPA, which enshrines respect for the rule of law, accountability and the promotion of human rights.

- The original statute plainly states that "superintendence of the Police Force throughout the State vests in … the Government" (Act s.4). The statute has not been amended to reflect the SC ruling and acknowledge the binding role of the SSC in setting policy guidelines for the police, or the PCA's binding role respecting criminal and disciplinary matters.

- The 1963 Act still empowers the state to appoint Special Police Officers (s.19) and Reserve Police Officers (s.152), and also authorizes the State to confer on them the "same powers, privileges and immunities" as possessed by "an ordinary Police officer" (s.19). Sweeping powers to create ad hoc officers are unwarranted and should be removed, given the state's pre-existing broad powers to appoint regular police officers. The creation of such ad hoc Police Officers is arbitrary and may be subject to abuse. For example, due to the emergency nature of their appointment, ad hoc Police Officers will not have adequate time to receive the same level of comprehensive training (in the use of firearms, the principles of law relating to the use of force, and the legal rights of the public) that all officers must be required to undergo. It is also unclear in the 1963 Act whether such ad hoc Police Officers will be answerable to the new Police Complaints Authority (Bill s.30F)

- The 1963 Act has not been amended to address police training or the creation of a Police Academy. It does not include any provisions related to mandatory training of new police recruits, annual refresher training, or pre-promotion training. It also lacks a requirement for training of Special Police Officers or Reserve Officers (unlike the MPA, ss.138-147).

- The 1963 Act lists the powers and duties of police officers (Act s.65), but has not been amended to reflect the duty to register and investigate all cognizable offences, and duly supply a copy of the FIR to the complainant (as contained in MPA s.57). In addition, the "public duties" of officers captured at s.68 of the original statute do not mirror the comprehensive list of social responsibilities articulated in MPA s.58. For example, the Karnataka statute does not indicate that officers must act with courtesy to seniors, provide requisite assistance to victims, and behave impartially in all conflicts between communities, classes and castes.

    - The statute lacks any provisions outlining the duty of police officers upon arrest or detention of any individual (to employ only reasonable force, provide access to a lawyer and doctor, etc.). (See as a counter example, Himachal Pradesh Police Act s.65)

- The statute does not prevent a police officer from serving in his Home police station or district. (See as a counter example, Himachal Pradesh Police Act s.86(2))

- The 1963 statute remains bereft of details concerning government protections that will be offered to police personnel (e.g. education, health care, housing, training). The statute does not include a provision requiring the tabling of an annual report compiling police grievances, and the legislation does not stipulate maximum working hours for officers (unlike the MPA, ss. 185-188)

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